



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|-----------------|-------------|----------------------|---------------------|------------------|
| 10/627,562 | 07/25/2003 | Srinivas Nomula | 31599/258478 | 3394 |

826 7590 10/05/2005

ALSTON & BIRD LLP
BANK OF AMERICA PLAZA
101 SOUTH TRYON STREET, SUITE 4000
CHARLOTTE, NC 28280-4000

| |
|----------|
| EXAMINER |
|----------|

HYLTON, ROBIN ANNETTE

| | |
|----------|--------------|
| ART UNIT | PAPER NUMBER |
|----------|--------------|

3727

DATE MAILED: 10/05/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/627,562

Applicant(s)

NOMULA, SRINIVAS

Examiner

Robin A. Hylton

Art Unit

3727

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-27 is/are pending in the application.
- 4a) Of the above claim(s) 21-27 is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. ____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 7-25-03.
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____.
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: ____.

DETAILED ACTION

Election/Restrictions

1. Restriction to one of the following inventions is required under 35 U.S.C. 121:
 - I. Claims 1-20, drawn to an easy-opening container, classified in class 220, subclass 269.
 - II. Claims 21-27, drawn to a method of sealing an opening of an easy-opening container, classified in class 156, subclass 69.

The inventions are distinct, each from the other because of the following reasons:

2. Inventions of Group II and Group I are related as process of making and product made, respectively. The inventions are distinct if either or both of the following can be shown: (1) that the process as claimed can be used to make other and materially different product or (2) that the product as claimed can be made by another and materially different process (MPEP § 806.05(f)). In the instant case the closure can be adapted for and attached to the container by spin bonding or other attachment methods known in the art.
3. Because these inventions are distinct for the reasons given above and have acquired a separate status in the art as shown by their different classification, restriction for examination purposes as indicated is proper.
4. During a telephone conversation with Nicholas Gallo on May 17, 2005 a provisional election was made with traverse to prosecute the invention of Group I, claims 1-20. Affirmation of this election must be made by applicant in replying to this Office action. Claims 21-27 withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

Claim Rejections - 35 USC § 112

5. Claims 10,11,19, and 20 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 10 recites the limitation "said outer membrane" in line 2. There is insufficient antecedent basis for this limitation in the claim.

Claim 11 recites the limitation "said outer membrane portion" in line 2. There is insufficient antecedent basis for this limitation in the claim.

Claim 19 recites the limitation "said outer membrane" in lines 1-2. There is insufficient antecedent basis for this limitation in the claim.

Claim 20 recites the limitation "said outer membrane portion" in lines 1-2. There is insufficient antecedent basis for this limitation in the claim.

Claim Rejections - 35 USC § 102

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

7. Claims 1,2,10-12,19, and 20 are rejected under 35 U.S.C. 102(b) as being anticipated by Buchner et al (US 4,533,063).

See figure 5 in particular illustrating a lid formed of plastic having an annular groove and grip portion for fracturing the annular groove and a container also formed of plastic.

Claim 11 is a product-by-process claim and does not further structurally limit the claimed invention. MPEP 2113. The lid of claim 20 is "adapted to be" friction welded.

Claim Rejections - 35 USC § 103

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

9. Claims 3-5, 13 and 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Buchner in view of Dutt et al. (US 4,687,116).

Buchner teaches the claimed container except for the grip portion being an annular pull ring of a diameter substantially corresponding to the annular groove and a weaker, secondary connection portion between the grip portion and the membrane.

Dutt teaches it is known to provide a grip portion in the form of an annular pull tab and to provide primary and secondary connection portions, the secondary connection portion being weaker than the primary connection portion.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to provide the grip portion as an annular pull tab, since such a modification would have involved a mere change in the shape of a component. A change in shape is generally recognized as being within the level of ordinary skill in the art.

It would have been an obvious matter of design choice to form the annular pull ring of a diameter substantially corresponding to the annular groove, since such a modification would have involved a mere change in the size of a component. A change in size is generally recognized as being within the level of ordinary skill in the art.

Additionally, it would have been obvious to one of ordinary skill in the art at the time the invention was made to provide a weaker, secondary connection portion between the grip portion

Art Unit: 3727

and the membrane. Doing so provides indication of possible tampering and differentiates a previously opened container with unopened containers when stored in the same location.

10. Claims 6 and 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Buchner.

Buchner teaches the claimed lid except for the fail strength of about 14 pounds or less. It would have been obvious to one having ordinary skill in the art at the time the invention was made to form the fail portion having a strength of about 14 pounds or less to optimize the lid strength for the desired amount of pressure needed to rupture the annular groove at the fail portion.

11. Claims 7-9 and 16-18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Buchner.

Wherein it can be argued Buchner does not explicitly teach the claimed material, it would have been obvious to one having ordinary skill in the art at the time the invention was made to select a barrier material of polyolefin containing oxygen scavengers, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice.

Conclusion

12. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Various prior art closures teaching features similar to those disclosed and/or claimed are cited for their disclosures.

13. In order to reduce pendency and avoid potential delays, Group 3720 is encouraging FAXing of responses to Office Actions directly into the Group at (703) 872-9306. This practice may be used for filing papers not requiring a fee. It may also be used for filing papers which require a fee by applicants who authorize charges to a PTO deposit account. Please identify

Art Unit: 3727

the examiner and art unit at the top of your cover sheet. Papers submitted via FAX into Group 3720 will be promptly forwarded to the examiner.

14. It is called to applicant's attention that if a communication is faxed before the reply time has expired, applicant may submit the reply with a "Certificate of Facsimile" which merely asserts that the reply is being faxed on a given date. So faxed, before the period for reply has expired, the reply may be considered timely. A suggested format for a certificate follows:

I hereby certify that this correspondence for Application Serial No. _____ is being facsimiled to The U.S. Patent and Trademark Office via fax number (703) 872-9306 on the date shown below:

Typed or printed name of person signing this certificate

Signature _____

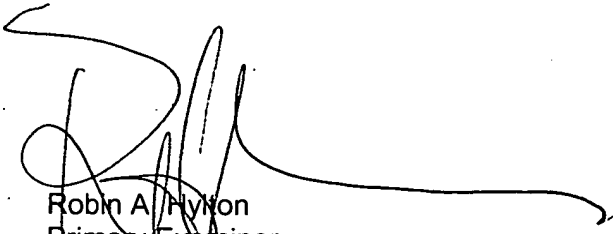
Date _____

15. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robin Hylton whose telephone number is (571) 272-4540. The examiner can normally be reached Monday - Friday from 9:00 a.m. to 4:00 p.m. (Eastern time).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nathan Newhouse, can be reached on (571) 272-4544.

Any inquiry of a general nature or relating to the status of this application or proceeding may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

RAH
September 19, 2005



Robin A. Hylton
Primary Examiner
GAU 3727